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Attorney for
TIFFANY L. CARROLL
ACTING UNITED STATES TRUSTEE

UNITED STATES BANKRUPTCY COURT

Southern District of California

| | | |
|----------------------------------|---|------------------------------------------------|
| In re: |) | Case No. 15-01068-CL11 |
| PREMIER GOLF PROPERTIES LP., |) | STATEMENT OF POSITION OF UNITED STATES TRUSTEE |
| |) | |
| Debtor and Debtor in Possession. |) | Hearing Date: None |
| |) | |
| |) | |

The United States Trustee responds to the APPLICATION FOR EMPLOYMENT OF JACK F. FITZMAURICE, EQ., AS GENERAL BANKRUPTCY COUNSEL FOR DEBTOR IN POSSESSION("Application") as follows:

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|-------------------|-----------------------------------------------------------|
| <u> </u> | The United States Trustee takes no position. |
| <u> </u> | The United States Trustee has no objection. |
| <u> </u> | The United States Trustee objects and requests a hearing. |
| <u>XX</u> | The United States Trustee objects as set forth below. |

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1 On February 27, 2015, the Office of the United States Trustee ("UST") received the
2 Debtor's Application to employ Jack F. Fitzmaurice. ("Fitzmaurice") as General Counsel for
3 the Debtor-In-Possession, ("Application"), to be effective as of the Chapter 11 Petition Date.
4 Based on Local Bankruptcy Rule 9034 ("LBR") the AUST has until March 11, 2015 to respond.
5 The Acting United States Trustee ("AUST") objects to the employment of Jack F. Fitzmaurice
6 ("Fitzmaurice"), based upon the following:
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8 **1. POST PETITION PAYMENT**

9 Pursuant to 11 U.S.C. §§330 and 331, the Debtor cannot pay any post-petition fees to
10 Fitzmaurice without prior authorization from the Court, and the Debtor would be required,
11 pursuant to Fed. R. Bankr. P. 2002(a) (6), to notice creditors prior to such payment since the
12 request for compensation of fees and expenses exceeds \$1,000.00.

13 The Application on page 3 Part III lines 21 -23 states that counsel has agreed to represent
14 Debtor upon terms calling for payment of \$10,000.00 per month. The Fee Agreement attached
15 to the application also contains the condition on Page 4 Paragraph one: "In addition and to cover
16 for all expected actual and necessary time spent on your behalf you agree to pay the sum of
\$10,000.00 per month."

17 The Bankruptcy Code does not permit professionals employed in a bankruptcy case to be
18 paid without obtaining court approval [11 U.S.C. §330]. In addition, the requirement of payment
19 of \$10,000.00 per month would be considered a post-petition-payment from the bankruptcy
20 estate property which would require a notice to all creditors and a hearing on same [See 11
21 U.S.C. §363].

22 Further, post-petition monthly payment of \$10,000.00 per month would create a situation
23 where counsel is being given preferential treatment over creditors. These post-petition monthly
24 payments of \$10,000.00 would deplete and lessen the value of the bankruptcy estate which is
25 prohibited and would create a situation where counsel is not disinterested. Section 327(a)
26 requires a two-prong standard for employment of professionals: (1) a disinterested person and (2)
27 a person who does not hold or represent an interest adverse to the estate. 11 U.S.C. § 327(a);
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1 *Envirodyne Indus., Inc.*, 150 B.R. 1008, 1016 (Bankr.N.D.Ill. 1993). The disinterested person is
2 defined in the Bankruptcy Code, in relevant part, as “a person that ... does not have an interest
3 materially adverse to the interest of the estate or of any class of creditors or equity security
4 holders, by reason of any direct or indirect relationship to, connection with, or interest in, the
5 debtor or for any other reason.” 11 U.S.C. § 101(14)(C). The Bankruptcy Code does not define
6 “adverse interest.”
7

8 However, by judicial definition, ‘to hold an adverse interest’ means (i) to possess or
9 assert any economic interest that would tend to lessen the value of the bankruptcy estate
10 or that would create either an actual or potential dispute in which the estate is a rival
11 claimant; or (ii) to possess a predisposition under circumstances that render such bias
12 against the estate. To ‘represent an adverse interest’ means to serve as agent or attorney
13 for any individual or entity holding such an adverse interest. *Envirodyne*, 150 B.R. at
14 1016-17.

15 2. PROPOSED ORDER

16 The Application that is filed with the Court should include a proposed order which
17 provides that no fees or costs will be paid to the firm without prior authorization from the Court.

18 Respectfully submitted,

19 TIFFANY L. CARROLL
20 ACTING UNITED STATES TRUSTEE

21 Dated: March 5, 2015

22 By: Mary J DuVoisin
23 Mary Testerman DuVoisin,
24 Attorney for the Acting
25 United States Trustee
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